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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

FEDERAL ELECTION COMMISSION,

Petitioner,

vs.

JAMES E. AKINS, RICHARD CURTISS, PAUL FINDLEY, ROBERT J. HANKS, ANDREW KILLGORE, and ORIN PARKER,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

BRIEF OF THE BRENNAN CENTER FOR JUSTICE AS *AMICUS CURIAE* SUPPORTING NEITHER PARTY

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INTEREST OF *AMICUS CURIAE*

The Brennan Center for Justice is a nonpartisan partnership between the family, friends, and law clerks of Justice William J. Brennan, Jr., and members of the faculty of New York University School of Law. The Center's ideal is to unite the intellectual resources of the academy with the pragmatic expertise of the bar in an effort to assist courts and legislatures in developing practical solutions to difficult problems in areas of special concern to Justice Brennan. Before giving his approval to the enterprise, Justice Brennan obtained a promise that the Brennan Center would function as a genuinely

independent center of thought, paying no special deference to his views or opinions. In keeping with Justice Brennan's legendary contributions to the law of American democracy, one of the Center's main programs is its Democracy Program.

This Court has long recognized that compelled disclosure of membership in, or support of, an organization seeking to advance political ends may chill freedom of speech and association. But this Court has also recognized that groups receiving and spending money for lobbying, or to influence the nomination or election of a candidate for federal office, can constitutionally be required to report the sources and recipients of such spending. Similarly, while this Court has long recognized a First Amendment right to raise and spend money to advance political ends, it has also recognized that restrictions may be imposed on the sources and amounts of certain campaign spending.

Where, as here, a group engages in multiple activities, some of which are constitutionally immune from regulation and some of which are covered by the federal lobbying or election laws, a practical and predictable means must be found to protect the legitimate First Amendment rights of such multipurpose groups and their supporters, while imposing appropriate regulation on the group's lobbying and campaign activities.

The Brennan Center submits this brief *amicus curiae* in support of neither party to suggest a pragmatic solution to the practical problem posed by multipurpose groups. *Amicus* believes that it is possible to subject the campaign activities of multipurpose groups to appropriate Federal Election Commission ("FEC") scrutiny, while shielding their non-regulable activities from governmental interference. Because fairness requires that existing multipurpose groups receive adequate notice of the approach *amicus* recommends, we urge the Court to remand these proceedings to the FEC for promulgation of new implementing regulations and for an initial decision on the applicability of the new regulations to the American-Israel Public Affairs Committee ("AIPAC").

The parties have consented to the filing of this brief *amicus curiae*. Pursuant to Rule 37, letters reflecting the parties' consent have been filed with the Clerk of the Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case poses the difficult question of how best to treat a multipurpose organization that expends substantial resources on activities that are virtually immune from government oversight, such as issue advocacy, while also engaging in electoral activity that is subject to a far greater degree of government regulation.

Existing law requires a rigid "either-or" approach. If a multipurpose organization is deemed to fall on the "electoral activity" side of the line, it is deemed a "political committee," and all activities of the organization, even those wholly unconnected with electoral politics, become subject to three forms of government regulation. First, the Federal Election Campaign Act ("FECA") requires public disclosure of information about the group's receipts and disbursements, including disclosure of the names and addresses of every person who makes even a single $50 contribution to the organization. *See* 2 U.S.C. § 432(c)(2). Second, the organization must forego financial support from labor unions or corporations. *Id.* at § 441b(a). Third, the organization may not accept contributions in excess of $5,000. *Id.* at § 441a(a)(1)(C). If, however, a multipurpose organization is deemed to fall on the non-electoral side of the line, because participation in electoral politics is not a "major purpose" of the organization, it is exempt from many disclosure requirements and all funding restrictions, even as to substantial sums expended to influence the outcome of elections. *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

In this case, the FEC ruled that although AIPAC had expended more than $1,000 in apparently inadvertent campaign contributions, it was not subject to regulation as a "political committee" because its "major purpose" was lobbying, not

electoral politics. The FEC noted that only a small portion of AIPAC's $10 million budget was used for electoral activities.

James E. Akins and others concerned with Middle East policy (collectively, "Akins"), alleging a desire to obtain information about AIPAC's funding, challenged the applicability of the "major purpose" test to organizations that exceed the statutory threshold of $1,000 in campaign contributions. The D.C. Circuit declined to apply the "major purpose" test to AIPAC, ruling that the "major purpose" test applied only to multipurpose groups making independent expenditures, not to those making campaign contributions. Accordingly, the court below placed AIPAC on the electoral activity side of the line, triggering public disclosure and loss of funding autonomy for all its activities, whether or not campaign-related.

Amicus maintains that the "either-or" approach to the issue adopted both by the parties and by the court below is fundamentally flawed. The FEC's approach provides multipurpose organizations with a windfall, enabling them to engage in substantial campaign activity without complying with the disclosure and funding rules applicable to everyone else. On the other hand, the all-or-nothing approach urged by Akins and by the court below is unduly harsh, forcing multipurpose organizations and their supporters to gamble the First Amendment rights of an entire organization on whether an insignificant portion of its activity will be deemed to fall on the right side of the obscure line separating electoral from non-electoral conduct.

Amicus believes that multipurpose organizations that fail to qualify for constitutional exemptions under *Brown v. Socialist Workers Party '74 Campaign Committee*, 459 U.S. 87 (1982), or *Massachusetts Citizens for Life*, 479 U.S. 238, should be permitted to establish and maintain strictly segregated funds fully subject to FEC regulation for use in electoral campaigns, while shielding their non-regulable activities from government oversight. Such a nuanced approach is faithful to this Court's precedents and to the structure of the federal election laws. In short, *amicus* believes that we can have both full

enjoyment of First Amendment freedoms and effective scrutiny of electoral spending.

ARGUMENT

I. THE COURT SHOULD REMAND THIS CASE FOR DEVELOPMENT OF NEW REGULATIONS APPLYING THE FEDERAL ELECTION LAWS TO MULTIPURPOSE POLITICAL GROUPS.

A. A Sound Definition of "Political Committee" Must Distinguish Between Political Activity Protected from Regulation and Political Activity Subject to Disclosure and Restrictions on Funding.

This Court has repeatedly affirmed the "vital relationship" between the robust exercise of First Amendment freedoms and the values of privacy. *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). In so doing, the Court has recognized that the First Amendment guarantees the right to engage in a wide range of political activities without risking public disclosure. *See, e.g., McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511 (1995) (preparation and distribution of anonymous leaflets opposing a school tax); *Lamont v. Postmaster General*, 381 U.S. 301 (1965) (receipt of communist literature); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963) (membership in political organization); *Shelton v. Tucker*, 364 U.S. 479 (1960) (membership in or contributions to organizations of all kinds); *Talley v. California*, 362 U.S. 60 (1960) (anonymous leafleting); *Bates v. Little Rock*, 361 U.S. 516 (1960) (financial support of political organization); *NAACP v. Alabama*, *supra* (membership in political organization); *United States v. Rumely*, 345 U.S. 41 (1953) (purchase of controversial books).

The Court has also recognized, however, that compelling governmental interests in preventing corruption and assuring an informed electorate may justify compelled public disclosure of the sources and amounts of campaign spending and lobbying expenses. *See, e.g., Buckley*, 424 U.S. at 66-68

(upholding disclosure of campaign contributions and expenditures); *United States v. Harriss*, 347 U.S. 612 (1954) (upholding limited disclosure of lobbying activities).[1]

The First Amendment protects not only the right to engage in anonymous political activity but also the right to raise and spend money in support of political ends. *See, e.g., Meyer v. Grant*, 486 U.S. 414 (1988) (invalidating ban on paid petition circulators.); *FEC v. National Conservative Political Action Committee*, 470 U.S. 480 (1985) (invalidating spending ceilings on independent expenditures by political committees); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980) (solicitation of funds protected by First Amendment); *Buckley*, 424 U.S. at 48 (expenditure of campaign funds protected by First Amendment). But the Court has also recognized that compelling interests associated with maintaining the integrity of the democratic process justify limiting the sources and amounts of certain election spending. *See Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990) (upholding flat ban on corporate political expenditures); *California Medical Ass'n v. FEC*, 453 U.S. 182 (1981) (upholding ceilings on contributions to multicandidate political committees); *Buckley*, 424 U.S. at 44 (upholding limits on amounts of individual campaign contributions).

When a group engages in only one type of political activity, the Court's complex First Amendment jurisprudence must be parsed to determine whether that activity falls on the

[1] The complex interaction between the Court's anonymous speech cases and its campaign disclosure jurisprudence is illustrated by *McIntyre v. Ohio Elections Comm'n, supra*. In that case, the Court invalidated Ohio's effort to ban anonymous election leaflets. However, if Mrs. McIntyre's leaflet had supported or opposed the election of a candidate for federal office, and if she had expended more than $250 in connection with her leafleting, she would have been obliged to report her activities to the FEC, even if she were free to omit her name from the leaflet itself. *See Buckley*, 424 U.S. at 84 (upholding 2 U.S.C. § 434(c)(1)). And if Mrs McIntyre had collected donations of $200 to finance her leaflets, the identities of the donors would also have been subject to disclosure to the FEC. *See* 2 U.S.C. § 434(c)(2)(C).

regulable or non-regulable side of the line. This case poses the even more difficult question of how to treat multipurpose organizations that engage in both regulable and non-regulable activity.

The trick is to find a test that is neither too permissive nor too harsh. If the Court reaffirms the "major purpose" test suggested by *Buckley* and embraced by the FEC, large multipurpose groups will be empowered to solicit, receive, and expend significant sums to influence the outcome of a federal election, with only limited public disclosure of campaign spending and entirely free from restrictions on the source and amount of contributions to the group. On the other hand, the rigid all-or-nothing test applied by the D.C. Circuit would strip a political organization and its $50 donors of any right to anonymity and would dramatically constrict its sources of funding, if the organization inadvertently spent more than $1,000 on what was subsequently deemed to be a campaign contribution or a coordinated expenditure, even when the vast bulk of the organization's activity qualified for full First Amendment protection from any form of government regulation.

Amicus believes that it is unnecessary to choose between a loophole and a booby trap. Instead, a pragmatic solution exists, under which a multipurpose organization wishing to shield non-campaign activities from regulation could establish and maintain a segregated fund for campaign-related activities. The maintenance of such a segregated fund would insulate an organization's non-campaign activities from government regulation, while subjecting campaign-related activity to appropriate restrictions. *Cf. Regan v. Taxation With Representation*, 461 U.S. 540 (1983). Divorcing campaign from non-campaign activities would also afford such an organization "breathing space," thereby permitting this Court to retreat from the unworkably narrow prophylactic definition of campaign speech set forth in *Buckley*, 424 U.S. at 80. *See infra* section I.C.

B. The Interpretations of the Term "Political Committee" Advanced by the Parties and by the Court Below Fail to Provide a Narrowly Tailored Approach to the Problem.

1. The FEC's Approach Opens an Unnecessary Loophole, Inviting Avoidance of Legitimate Regulation of the Electoral Process.

In its petition for certiorari in this case, the FEC correctly describes current law. Under *Buckley*, an organization that is not controlled by a candidate cannot be deemed a "political committee" — even if it receives, spends, or contributes more than the statutory minimum of $1,000 in connection with a federal election — unless the organization's "major purpose" is the nomination or election of a candidate. 424 U.S. at 79; *see also Massachusetts Citizens for Life,* 479 U.S. at 252 n.6. Thus, under existing law, whether or not a multipurpose organization will be deemed a political committee will depend on how its campaign-related activities compare in size and importance to its other activities.

The language of *Buckley* and this Court's application of the "major purpose" test in *Massachusetts Citizens for Life,* strongly support the FEC's determination that, under current law, AIPAC is not a political committee. The FEC found, and Akins does not appear to contest, that AIPAC's "campaign-related activities were only a small portion of its overall activities and not its major purpose." *Akins v. FEC*, 101 F.3d 731, 734 (D.C. Cir. 1997) (*en banc*), *cert. granted*, 117 S. Ct. 2451 (1997). Thus, because "AIPAC is primarily a lobbying organization interested in promoting U.S.-Israel relations," *Akins v. FEC*, 66 F.3d 348, 350 (D.C. Cir. 1995), *rev'd on other grounds*, 101 F.3d 731, it does not fall within *Buckley*'s definition of a "political committee."

The FEC's determination is, nevertheless, extremely troubling. As the D.C. Circuit noted, the FEC's application of the "major purpose" doctrine permits AIPAC to shield campaign-related disbursements from public scrutiny, even though the

amounts exceed the figure deemed by Congress to create a risk of corruption. The interest in public disclosure of AIPAC's campaign-related spending is no less weighty than it would be if the identical payments accounted for the bulk of the organization's budget. Indeed, if AIPAC were smaller, the compelling interest in public disclosure might well require it to disclose its campaign-related spending because electoral politics would represent a proportionately larger part of its activities. It simply makes no sense to treat identical amounts of electoral spending differently depending upon the size of the spender. Nor is it fair to allow AIPAC to receive funds from sources and in amounts that are denied to other groups engaged in identical electoral activity merely because AIPAC's substantial size renders the payments relatively small in comparison with the rest of AIPAC's budget.[2]

2. The D.C. Circuit's Approach Unnecessarily Abridges First Amendment Rights and Opens Another Loophole.

The D.C. Circuit argues that the "major purpose" test should apply only in settings where a multipurpose group makes independent expenditures on behalf of a candidate for federal office, as opposed to contributions or coordinated expenditures. Because AIPAC was found to have made more than $1,000 in contributions (albeit inadvertently), the Circuit ruled that the entire group must be treated as a "political committee," with a consequent loss of anonymity for all of its $50 contributors and the imposition of significant restrictions on the source and amount of its funding. The Circuit's approach is both unduly harsh to multipurpose groups that inadvertently stray over the "campaign contribution" line and unduly generous to multipurpose groups that make substantial

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[2]Such favorable treatment of AIPAC is particularly inappropriate since its major purpose is not to engage in a non-regulable activity like issue advocacy, but rather to lobby, an activity that itself is subject to substantial regulation.

independent expenditures in connection with a federal election.

The Circuit's test is unduly harsh because it places the critical First Amendment rights of an entire organization and its supporters in retroactive jeopardy merely because an official of the organization inadvertently crosses one of the ill-defined lines between a campaign expenditure and a campaign contribution, on the one hand, and between issue advocacy and campaign speech, on the other. One of the unfortunate consequences of this Court's decision in *Buckley* is the inordinate importance attached to labeling campaign spending as an expenditure or a contribution. *Amicus* believes that the effort in *Buckley* to invest the distinction between campaign contributions and campaign expenditures with enormous constitutional significance is analytically unpersuasive and practically unworkable. Whatever its intrinsic merit, however, the distinction is often difficult to apply. *See Colorado Republican Federal Campaign Committee v. FEC*, 116 S. Ct. 2309 (1996).

The D.C. Circuit's approach thus forces a multipurpose group to wend its way through a definitional minefield, with a wrong step severely limiting the organization's ability to engage in anonymous speech and imposing significant restrictions on the group's sources and levels of financial support. Where critical First Amendment rights are at stake, such a version of organizational "Russian roulette" is unacceptable.

Moreover, the Circuit's solution simply reproduces the problem with the FEC's test within the context of expenditures. Under the Circuit's approach, large multipurpose organizations would be encouraged to make substantial campaign expenditures, free from the disclosure rules applicable to smaller groups whose identical expenditures would constitute a larger percentage of their budget and would thus be regarded as their "major purpose." Large multipurpose organizations bent on influencing an election could also receive money from sources and in amounts that would be illegal for

small groups whose identical expenditures pushed them over the "major purpose" line.

Akins' variant on the "major purpose" test, proffered in opposition to the petition for certiorari, suffers from the same all-or-nothing flaw that plagues the D.C. Circuit's approach. Akins argues that if more than $1,000 is disbursed in connection with a federal campaign, the organization must be deemed to be a political committee, unless it qualifies for an exemption under *Brown*, 459 U.S. 87, or *Massachusetts Citizens for Life*, 479 U.S. 238. But such an approach leaves those multipurpose organizations that cannot qualify for such an exemption at constant risk of inadvertent slippage from issue advocacy to campaign activity. Moreover, Akins' suggestion that the FEC be vested with unconstrained discretion to separate the regulable and non-regulable aspects of a multipurpose organization's activities raises more First Amendment problems than it solves.

C. The First Amendment Challenge Posed by the Campaign Activities of Multipurpose Organizations Has a Pragmatic Solution Consistent With Congressional Intent and this Court's Constitutional Precedents.

As *amicus* has noted, characterizing a multipurpose organization as a "political committee" has at least three real-world consequences. First, the organization must report all receipts and expenditures to the FEC, subjecting even its $50 donors to public scrutiny. Second, the organization may no longer accept funds from corporations or labor unions. Third, the organization must operate with a ceiling on the donations it receives. While developing a workable approach to multipurpose organizations is complicated by the fact that First Amendment doctrine varies widely depending upon whether disclosure, expenditures, or contributions are at issue, *amicus* believes that a workable approach to multipurpose organizations is suggested by the Court's precedents and Congress' structural innovations.

First, whether or not a multipurpose organization falls within the definition of a "political committee," this Court has ruled that it must be exempt from disclosure requirements upon a showing that its political program is highly controversial, subjecting any identified supporters to a real possibility of persecution. *See Brown*, 459 U.S. at 101-02.[3] Thus, controversial multipurpose political organizations may remove themselves from FEC scrutiny upon a proper showing.

Second, even if an organization fails to qualify for a *Brown* exemption, this Court has recognized a "small entities" exemption for "issue advocacy" organizations that do not have as a "major purpose" the influencing of federal elections. *See Massachusetts Citizens for Life*, 479 U.S. at 254. In order to qualify for such a "small entity" exemption, an organization must be formed for political, not business, purposes; it may not have shareholders or other affiliated persons with a claim on its earnings; and it may not be established by or receive support from corporations or labor unions. Under *Massachusetts Citizens for Life*, the entity must make only minimal or occasional expenditures in support of candidates and no contributions to candidates. As applied to such small, issue advocacy groups, the concept of "major purpose" works well to prevent the FECA from unconstitutionally destroying an organization's right to anonymity and unduly restricting its funding base.

Third, if an organization fails to qualify for a "controversial organization" or a "small entity" exemption under *Brown* or *Massachusetts Citizens for Life*, this Court has recognized that the establishment of a separate but affiliated organization may permit a multipurpose group to shield one type of

[3] In *Buckley*, the Court rejected a facial effort to exempt such controversial organizations, and minor parties generally, from contribution restrictions. *See Buckley*, 424 U.S. at 33-34. The *Buckley* Court held open the possibility that controversial organizations could obtain "as applied" exemptions from disclosure requirements based on a showing that the requirements would subject them to "threats, harassment, or reprisals." *Id.* at 74.

activity from regulation applicable to another. *Cf. Regan*, 461 U.S. 540. While the FECA does not appear to provide explicitly for the use of separate but affiliated organizations, the ability to segregate regulable from non-regulable political activities is required by the First Amendment. *See FEC v. League of Women Voters*, 468 U.S. 364, 400 (1984) (finding a First Amendment violation when the option of segregating activities was not available).

Fourth, if a multipurpose organization finds it unduly burdensome to create a separate but affiliated entity, Congress' recognition that "separate segregated funds" may be used to facilitate campaign activity that could not otherwise occur provides a structural model for separating regulable from non-regulable activities. *See* 2 U.S.C. § 441b(b)(2)(C); *FEC v. National Right to Work Committee*, 459 U.S. 197, 201 (1982). Thus, if a multipurpose organization establishes and maintains a carefully segregated fund for use in campaign contexts, the organization could comply fully with disclosure, source, and amount limitations, while shielding its non-regulable activities from unconstitutional government regulation. Of course, such a segregated fund must bear its full share of all fixed expenses. But, assuming that appropriate accounting principles are maintained, the use of a segregated fund would appear to provide a vehicle to permit appropriate regulation of the electoral process, while shielding issue advocacy from unconstitutional regulation.

If a multipurpose organization fails to qualify for a constitutional exemption, and fails to organize its activities to separate regulable campaign activities from non-regulable issue advocacy activities, it would forfeit its ability to engage in anonymous political activity and would subject its financing to FEC regulation. Thus, while AIPAC may well not be obliged under the prevailing "major purpose" test to disclose contributors or to respect restrictions on fund-raising imposed by the FECA, AIPAC might well be subject to disclosure and funding restrictions under the new approach proposed by *amicus*. *Amicus* therefore urges the Court to remand this proceeding to the FEC for the consideration of prospective

regulations that deal effectively with the campaign activities of multipurpose organizations by providing for separate organizations or segregated funds.

Adopting regulations permitting the use of segregated funds and clarifying the availability of a "small entity" exemption would also permit this Court to ease the unrealistically narrow definition of campaign speech set forth in *Buckley*. Concerned with the possibility that issue advocacy organizations might unwittingly find themselves labeled as campaign organizations, with the consequent loss of privacy and funding autonomy, this Court adopted an extremely narrow definition of campaign speech that covered only those communications that "expressly advocate the election or defeat of a clearly identified candidate." 424 U.S. at 80. Unfortunately, such a restrictive definition has spawned a serious loophole, permitting groups to expend significant funds in an obvious effort to affect the outcome of federal elections, but to escape all regulation by avoiding the use of so-called "magic words" "expressly" advocating the election or defeat of a candidate. Once an organization is given the "safe harbor" of a segregated campaign fund, however, it would no longer be necessary to adopt a prophylactically narrow definition of campaign speech to protect the entire organization. The FEC would then be free to adopt a realistic definition of campaign speech geared to a speaker's obvious intent to affect the outcome of a particular election.

II. THIS COURT SHOULD AFFIRM AKINS' STANDING TO CHALLENGE THE FEC'S EXEMPTION OF AIPAC FROM REGULATION AS A POLITICAL COMMITTEE.

Akins must show that he satisfies the threshold requirements for standing under Article III of the federal Constitution and that he conforms to principles of prudential standing. To fulfill the requirement of Article III that there be a "case" or "controversy" for adjudication, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested

relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Prudential standing principles are judicially self-imposed limits on the exercise of federal jurisdiction, which can be modified or abrogated by Congress. *See Bennett v. Spear*, 117 S. Ct. 1154, 1161 (1997). The D.C. Circuit correctly concluded that Akins had met the standards for both constitutional and prudential standing.

Congress's clear intent in enacting the FECA was (among other things) to provide public access to information that political committees were required to report. The Act specifically mandates that all reports filed with the FEC, the Clerk of the House of Representatives, the Secretary of the Senate, and State officers who maintain election campaign reports be made available for public inspection within 48 hours of receipt. *See* 2 U.S.C. §§ 432(g)(5), 438(a)(4), 439(b)(3). *Buckley* confirmed that two of the compelling governmental interests served by the FECA's reporting and disclosure requirements were to "provide[] the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek federal office," and to "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." 424 U.S. at 66-67 (footnote and citation omitted).

The structure of the FECA makes it clear that Congress intended to give all persons a right to obtain reportable information and not merely to impose on political committees a duty to report enforceable by the FEC. The FECA authorizes "any person" who believes that the Act's reporting (or other) requirements have been violated to file a complaint with the FEC. 2 U.S.C. § 437g(a)(1). If the FEC does not timely act upon the complaint or dismisses it, the person may petition the District Court for the District of Columbia for further review. *Id.* § 437g(a)(8)(A).

Akins' allegations that he has been deprived of information to which he has a right under the FECA and that could affect

his decision-making as a voter and otherwise politically active citizen thus establish the requisite injury in fact. *See Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("The . . . injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'") (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973)). "The fact that other citizens or groups of citizens might make the same complaint . . . does not lessen [the] asserted injury . . . ." *Public Citizen v. United States Department of Justice*, 491 U.S. 440, 449-50 (1989). The injury asserted here is "fairly traceable" to the FEC because it is the direct result of the agency's determination that AIPAC is not a political committee and is thus not required to disclose its receipts and disbursements. And the injury is redressable by the requested relief because a judicial determination that AIPAC is a political committee would subject the organization to the FECA's registration and reporting requirements and ultimately provide Akins with the information he seeks. Akins has therefore met the requirements for Article III standing.

As to Akins' prudential standing, Congress has defined a wide zone of interests in enacting the FECA. Section 437g(a)(8)(A) provides:

> Any party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . , or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

The petition must be filed within 60 days from the date of dismissal. 2 U.S.C. § 437g(a)(8)(B). Because "any person" may file the initial complaint with the FEC, *see id.* § 437g(a)(1), Congress has effectively widened the FECA's "zone of interests" to include "any person" that satisfies the constitutional minimum for standing, provided that the person exhausts administrative remedies (by filing a complaint with the FEC and waiting 120 days or until the complaint is

dismissed) and petitions the District Court within 60 days. The statutory intent "to permit enforcement by everyman," *Bennett*, 117 S. Ct at 1163, is further confirmed by the provision permitting the complainant to sue the violator directly, should the FEC fail to act on a District Court order to commence enforcement within 30 days. *See* 2 U.S.C. § 437g(a)(8)(C). Accordingly, Akins should be found to have prudential standing.

An additional prudential consideration calls for the recognition of broad standing to challenge the actions of the FEC. From its inception, the structure of the FEC has been intentionally designed to represent the interests of the two major political parties. While such careful political fine-tuning may be appropriate in an agency with jurisdiction over the electoral process, it poses the danger that the interests of the established political parties will play an inappropriately significant role in the FEC's activities. Recognizing Congress' desire to accord broad standing to challenge FEC actions would provide an important check on the potential for abuse.

CONCLUSION

The decision below should be vacated and remanded to the FEC with instructions to adopt regulations permitting multi-purpose organizations to utilize segregated funds or separate but affiliated organizations to distinguish between regulable and non-regulable activities. The issue of AIPAC's compliance with the FECA should be reconsidered in light of any new regulations adopted by the FEC.

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Respectfully submitted,

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